



STATE BOARD OF EQUALIZATION

May 30, 1975

J--- & J---
XXX --- Street
--- ---, --- XXXXX

Attention: Mr. S---
Tax Manager

Gentlemen:

SS --- XX XXXXXX

At the request of Mr. R--- -. F--- of F--- and A--- Management Services, we are writing to you to advise you as to the taxability of medicated gauzes under California Revenue and Taxation Code Section 6369 and our Regulation 1591 "Prescription Medicines."

Our Regulation 1591 provides that "medicines" means and includes any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of diseases and which is commonly recognized as a substance or preparation intended for such use.

Sales of "medicines" are exempt if the sales meet any of the conditions outlined in paragraph (a) of the regulation.

As Mr. F--- has advised you, we are of the opinion that medicated gauzes, pads, and other dressings qualify as "medicines" under Regulation 1591 if the medication qualifies as a "medicine." We have thus stated our opinion that furacin gauze or antibiotic dressings, Tucks (brand name) pads, Tucks Take-a-Longs, Scarlet red ointment dressings, and petroleum and lubricating jelly dressings qualify as "medicines." Your product A--- Non-Adhering Dressings and Non-Adhering Packing Strips would appear not to qualify as a medicine under our standard however. The a--- materials are described in your catalog as "a primary surgical dressing with four important features: It is non-adhering, helps prevent maceration, conforms and is porous. A--- Non-Adhering Dressing is knitted or rayon viscous filaments impregnated with a specially formulated petroleum emulsion to permit rapid wicking of wound exudates through this primary dressing." It would appear that the petroleum emulsion is not a substance or preparation intended for use by external application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease. Rather, the material seems intended only to import certain characteristics to the dressing itself.

J--- and J---
SS --- XX XXXXXX

-2-

May 30, 1975
425.0547.300

With respect to the additional questions raised by you with Mr. F---, if a transaction is subject to the California sales tax, the taxpayer under the law is the retailer. If the transaction is not taxable, it is the retailer who is entitled to the refund and who must file the claim for refund. Payment of the refund to the retailer by the state is conditioned upon the retailer's undertaking to pay the amount of the refund over to his customer if he has collected sales tax reimbursement from that customer. The purpose of this rule is to prevent the unjust enrichment of the retailer. If a transaction is subject to the California use tax, the purchaser may himself file a claim for refund since the legal incidence of the use tax is upon the purchaser.

Letters of interpretation issued by this office are of general applicability, as are our regulations. The Commerce Clearing House and Prentice Hall tax services continuously monitor such letter originating from this office and summarize many of these letters in their sales and use tax services.

Very truly yours,

Gary J. Jugum
Tax Counsel

J:alicetilton